PROSKAUER ROSE LLP

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Date

November 8, 2004

Client-Matter

49548-032

Fax Transmittal

Total Pages (Including Cover)

From

Joseph A. Capraro, Jr.

Sender's Voice Number

617,526.9800

Sender's Room Number

Sender's Email Address

jcapraro@proskauer.com

Main Fax Number

617.526.9899

Examiner Mark Paschall

Fax No.:

703.872.9306

Company:

US Patent and Trademark Office

Voice No.:

703.308.1642

Message

Re: U.S. Patent Appliction Serial No.: 09/774,165

Attorney Docket No. ASX-015CP

Examiner Paschall,

Regarding my voicemail of November 3, 2004, attached are copies of the Form PTO-1449, associated transmittal papers, and the Return Receipt postcard that we submitted to the USPTO on January 9, 2004 for U.S. Patent Application Serial No. 09/774,165. The Return Receipt postcard was stamped on January 12, 2004 by the USPTO, acknowledging receipt of the Form PTO-1449 and related papers.

At your earliest convenience, please initial the references listed in the Form PTO-1449 and return the initialed form to us via return facsimile. Please let me know if you would like us to provide you with new copies of the documents listed in the Form PTO-1449.

Thank you for your assistant in this matter.

Joseph A. Capraro, Jr.

Reg. No. 36,471

Phone: 617.526.9800 Fax: 617.526.9899

Confidentiality Note: This message is confidential and intended only for the use of the addressee(s) named above. It may contain legally privileged material. Dissemination, distribution or copying of this message, other than by such addressee(s), is strictly prohibited. If you have received this message in error, please immediately notify us by telephone and return the original to us at the address above. We will reimburse you for the cost of the telephone call and postage. Thank you.

PACE 2/13* RCVD AT 1/18/2004 2:55:46 PM [Eastern Standard Time]* SVR:USPTO-EFXRF-1/1* DNIS:8729306* CGID: 16/18/2004 2:55:46 PM [Eastern Standard Time] * SVR:USPTO-EFXRF-1/1* DNIS:8729306* CGID: 16/18/2004 2:55:46 PM [Eastern Standard Time] * SVR:USPTO-EFXRF-1/1* DNIS:8729306* CGID: 16/18/2004 2:55:46 PM [Eastern Standard Time] * SVR:USPTO-EFXRF-1/1* DNIS:8729306* CGID: 16/18/2004 2:55:46 PM [Eastern Standard Time] * SVR:USPTO-EFXRF-1/1* DNIS:872906* CGID: 16/18/2004 2:55:46 PM [Eastern Standard Time] * SVR:USPTO-EFXRF-1/1* DNIS:872906* CGID: 16/18/2004 2:55:46 PM [Eastern Standard Time] * SVR:USPTO-EFXRF-1/1* DNIS:872906* CGID: 16/18/2004 2:55:46 PM [Eastern Standard Time] * SVR:USPTO-EFXRF-1/1* DNIS:872906* CGID: 16/18/2004 2:55:46 PM [Eastern Standard Time] * SVR:USPTO-EFXRF-1/1* DNIS:872906* CGID: 16/18/2004 2:55:46 PM [Eastern Standard Time] * SVR:USPTO-EFXRF-1/1* DNIS:872906* CGID: 16/18/2004 2:55:46 PM [Eastern Standard Time] * SVR:USPTO-EFXRF-1/1* DNIS:872906* CGID: 16/18/2004 2:55:46 PM [Eastern Standard Time] * SVR:USPTO-EFXRF-1/1* DNIS:872906* CGID: 16/18/2004 2:55:46 PM [Eastern Standard Time] * SVR:USPTO-EFXRF-1/1* DNIS:872906* CGID: 16/18/2004 2:55:46 PM [Eastern Standard Time] * SVR:USPTO-EFXRF-1/1* DNIS:872906* CGID: 16/18/2004 2:55:46 PM [Eastern Standard Time] * SVR:USPTO-EFXRF-1/1* DNIS:872906* CGID: 16/18/2004 2:55:46 PM [Eastern Standard Time] * SVR:USPTO-EFXRF-1/1* DNIS:872906* CGID: 16/18/2004 2:55:46 PM [Eastern Standard Time] * SVR:USPTO-EFXRF-1/1* DNIS:872906* CGID: 16/18/2004 2:55:46 PM [Eastern Standard Time] * SVR:USPTO-EFXRF-1/1* DNIS:872906* CGID: 16/18/2004 2:55:46 PM [Eastern Standard Time] * SVR:USPTO-EFXRF-1/1* DNIS:872906* CGID: 16/18/2004 2:55:46 PM [Eastern Standard Time] * SVR:USPTO-EFXRF-1/1* DNIS:872906* CGID: 16/18/2004 2:55:46 PM [Eastern Standard Time] * SVR:USPTO-EFXRF-1/1* DNIS:872906* CGID: 16/18/2004 2:55:46 PM [Eastern Standard Time] * SVR:USPTO-EFXRF-1/1* DNIS:872906* CGID: 16/18/2004 2:55:46 PM [Eastern Standard Time] * SVR:USPTO-EFXRF-1/1* DNIS:872906* CGID:

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Transmittal Form (1 page); Fee Transmittal (1 page); Supplemental Information Disclos Statement (3 pages); Form PTO-1449 (3 pages); References Labeled A76 to A123, B6 a C122 to C125; Check in the Amount of \$180.00; and a Certificate of First Class Mailing Dated January 9, 2004 (1 page).

Applicants:

Joseph A. Capraro, Jr./om January 9, 2004 09/774,165 Chen et al.

Serial Number:

Atty: Date:

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PATENT Attorney Docket No. ASX-015CP

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

APPLICANT(S):

Chen et al.

SERIAL NO.:

09/774,165

GROUP NO.:

3742

FILING DATE:

Janaury 26, 2001

EXAMINER:

M. Paschall

TITLE:

INTEGRATED PLASMA CHAMBER AND INDUCTIVELY-

COUPLED TOROIDAL PLASMA SOURCE

CERTIFICATE OF FIRST CLASS MAILING UNDER 37 C.F.R. 1.8

I hereby certify that this correspondence, and any document(s) referred to as enclosed herein, is/are being deposited with the United States Postal Service as first class mail, postage prepaid, in an envelope addressed to the Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450 on this 9th day of January, 2004.

Olivia I. Mannion

Commissioner for Patents P.O. Box 1450 Alexandria, VA 22313-1450

Sir:

Submitted herewith are: Transmittal Form (1 page); Fee Transmittal (1 page); Supplemental Information Disclosure Statement (3 pages); Form PTO-1449 (3 pages); References Labeled A76 to A123, B6 and C122 to C125; Check in the Amount of \$180; and a return receipt postcard.

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		(617) 248- (617) 248-		Fax No.: (617) 248	-7100	Testa, Hurwitz & Thibeault, LLP High Street Tower			
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I						Boston, MA 02110			

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FEE TRANSMITTAL FY 2004

Complete if Known								
Application Serial Number	09/774,165							
Filing Date	January 26, 2001							
First Named Inventor	Chen							
Group Art Unit	3742							
Examiner Name	M. Paschall							
Attorney Docket No.	ASX-015CP							

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IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

APPLICANT(S):

Chen et al.

SERIAL NO.:

09/774,165

GROUP NO.:

3742

FILING DATE:

Janaury 26, 2001

EXAMINER:

M. Paschall

TITLE:

INTEGRATED PLASMA CHAMBER AND INDUCTIVELY-

COUPLED TOROIDAL PLASMA SOURCE

Commissioner for Patents P.O. Box 1450 Alexandria, VA 22313-1450

SUPPLEMENTAL INFORMATION DISCLOSURE STATEMENT

Sir:

In accordance with the provisions of 37 C.F.R. 1.97 and 1.98, Applicants hereby make of record the patents and publications listed on the accompanying Form PTO-1449, and other information contained herein, for consideration by the Examiner in connection with the examination of the above-identified patent application. Copies of the patents and publications are enclosed.

REMARKS

In accordance with the provisions of 37 C.F.R. 1.97, this statement is being filed (CHECK ONE):

	(1)	within three (3) months of the filing date of a national application other than a continued prosecution application under 37 C.F.R. 1.53(d), or within three (3) months of the date of entry of the national stage as set forth in 37 C.F.R. 1.491 in an international application, or before the mailing of the first Office action on the merits, or before the mailing of a first Office action after the filing of a request for continued examination under 37 C.F.R. 1.114; or					
\boxtimes	(2)	after the period defined in (1) but before the mailing date of a final action or a notice of allowance under 37 C.F.R. 1.311, and					
		the requisite Statement is below, OR					
	\boxtimes	the requisite fee under 37 C.F.R. 1.17(p), namely \$180.00, is included herein, or					

PAGE 7/13 * RCVD AT 11/8/2004 2:55:46 PM [Eastern Standard Time] * SVR:USPTO-EFXRF-1/1 * DNIS:8729306 * CSID:16175269899 * DURATION (mm-ss):03-44 Supplemental Information Disclosure Statement Serial No. 09/774,165 Page 2 after the mailing date of a final action or notice of allowance but before the payment (3) of the issue fee, AND the requisite Statement is below, AND the requisite petition fee under 37 C.F.R. 1.17(p), namely \$180.00 is included herein. It is respectfully requested that each of the patents and publications listed on the attached Form PTO-1449, and other information contained herein, be made of record in this application.

STATEMENT

As required under 37 C.F.R. 1.97(e), Applicant(s), through the undersigned, hereby state either that [check the appropriate space only if either (2) or (3) is checked on the previous page and the Statement is required]:

- Each item of information contained in the Information Disclosure Statement was 1. first cited in any communication from a foreign patent office in a counterpart foreign application not more than three months prior to the filing of the Information Disclosure Statement; or
- No item of information contained in the Information Disclosure Statement was 2. cited in a communication from a foreign patent office in a counterpart foreign application, and, to the knowledge of the person signing this Statement after making reasonable inquiry, no item of information contained in the Information Disclosure Statement was known to any individual designated in 37 C.F.R. 1.56(c) more than three months prior to the filing of the Information Disclosure Statement.

On April 3, 2003, Advanced Energy Industries, Inc. ("Advanced Energy") filed a Complaint in the United States District Court, District of Colorado (Civil Action No. 03-WM-0573 (CBS)) seeking a Declaratory Judgment that certain of its reactive gas sources do not infringe three patents owned by MKS Instruments, Inc.'s ("MKS's") subsidiary Applied Science and Technology, Inc. ("ASTeX"). The patents at issue in the Colorado lawsuit include U.S. Patent 6,150,628, U.S. Patent No. 6,338,226, and U.S. Patent No. 6,486,431. The subject application is a continuation-in-part of US Serial No. 09/774,165, which is a continuation-in-part of US Patent No. 6,486,431, which is a continuation of U.S. Patent 6,150,628. On May 14, 2003, MKS moved to dismiss or transfer the Colorado lawsuit.

On May 14, 2003, MKS and its subsidiary ASTeX filed a Complaint in United States District Court, District of Delaware (Civil Action No. 03-469-JJF) alleging that Advanced Energy was infringing

PAGE 8113 * RCVD AT 11/8/2004 2:55:46 PM [Eastern Standard Time] * SVR:USPTO-EFXRF-111 * DNIS:8729306 * CSID:16175269899 * DURATION (mm-ss):03-44

Supplemental Information Disclosure Statement Serial No. 09/774,165 Page 3

five patents owned by ASTeX by making, offering for sale and selling certain reactive gas sources. The patents at issue in the Delaware lawsuit include the patents at issue in the Colorado lawsuit, U.S. Patent 6,552,296, and U.S. Patent No. 6,559,408. On July 10, 2003, Advanced Energy moved to dismiss or transfer the Delaware lawsuit. On December 24, 2003, the Colorado Court ordered the lawsuit transferred to the United States Court, District of Delaware. A Markman Hearing in the Delaware lawsuit is scheduled for January 13, 2004, and a jury trial is scheduled for late July 2004. Discovery is proceeding on a schedule set by the United States District Court, District of Delaware.

Applicants' enclose copies of the complaint and amended complaint in the (now transferred) Colorado lawsuit and copies of the complaint and answer in the Delaware lawsuit. In its amended complaint in the Colorado lawsuit and its answer in the Delaware lawsuit, AE alleges that one or more claims of the '628, '226, '431, '296, and '408 patents are invalid. See, e.g. pg. 9 of the amended complaint in the Colorado lawsuit (C125) and pg. 5 of the answer in the Delaware lawsuit (C124). As the Defendant in the Delaware lawsuit, Advanced Energy, has brought the patents and publications listed on the attached Form PTO-1449 to Applicants' attention during the discovery process.

In its amended complaint in the Colorado lawsuit and its answer in the Delaware lawsuit, Advanced Energy alleges, among other things, that one or more of the '226, '431, '296 and '408 patents are invalid, void and/or unenforceable due to inequitable conduct with intent to deceive in the form of failing to disclose material information, making material misrepresentations of fact, or submitting false material information to the PTO during prosecution of the applications that became the '226, '431, '296 and '408 patents. See, e.g., pp. 4-8 of the amended complaint in the Colorado lawsuit (C125) and pp. 6-11 of the answer in the Delaware lawsuit (C124).

Applicants' believe that the above-described allegations are without merit and expect to be fully vindicated through the judicial process. In accordance with their duty of candor and good faith, Applicants submit the enclosed documents for consideration.

If the Examiner has questions regarding any of the above, the Examiner is invited to call the undersigned attorney at (617) 248-7369.

Date: January 9, 2004 Reg. No. 36,471

Tel. No.: (617) 248-7369 Fax No.: (617) 248-7100

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Respectfully submitted,

Attorney for the Applicants
Testa, Hurwitz, & Thibeault, LLP

High Street Tower 125 High Street

Boston, Massachusetts 02110

SHEET I OF 3

FORM PTO - 1449 ATTORNEY DOCKET NO.: ASX-015CP

SUPPLEMENTAL INFORMATION DISCLOSURE STATEMENT

APPLICANTS: Chen et al.

SERIAL NO.: 09/774,165

·			U.S.	PATENT	DOCUMENTS				
EXAM. Init.		DOCUMENT NUMBER	DATE	NAME		CLASS	SUB CLASS	FILING DATE IF APPROPRIATE	
	A76	H268	05/05/87	Owen					
	A77	3,054,742	09/18/62	Thonemar	nn et al.				
	A78	3,109,801	11/05/63	Thonemar	nn		<u>.</u>		
	A79	3,278,384	10/11/66	Lenard et	al.				
	A80	3,433,705	03/18/69	Cornish		ľ			
	A81	4,057,462	11/08/77	Jassby ct	al.			_	
	A82	4,073,680	02/14/78	Kelley					
	A83	4,110,595	08/29/78	Brambilla	et al.				
-	A84	4,263,096	04/21/81	Ohkawa c	x el.				
	A85	4,282,267	08/04/81	Küyel					
	A86	4,292,125	09/29/81	Bers					
	A87	4,368,092	01/11/83	Steinberg	et al.				
	A88	4,431,898	02/14/84	Reinberg	ct al.				
	A89	4,601,871	07/22/86	Tumer	441.				
	A90	4,679,007	07/07/87	Roose et	al.				
-	A91	4,732,761	03/22/88	Machida	et al.				
	A92	4,735,765	04/05/88	Harris et	al.				
•	A93	4,767,590	08/30/88	Stix et al		7			
	A94	4,780,803	10/25/88	Dede Ga	rcia-Santamaria	· ·			
	A95	4,794,217	12/27/88	Quan et	al.				
	A96	4,861,622	08/29/89	Yamazak	ci et al.				
	A97	4,863,671	09/05/89	Okada		T			

SHEET 2 OF 3

FORM PTO - 1449

SUPPLEMENTAL INFORMATION DISCLOSURE STATEMENT

ATTORNEY DOCKET NO.: ASX-015CP

APPLICANTS: Chen et al.

DISCLOSURE STATEMENT					SERIAL NO.: 09/774,165					
					FILING DATE: J	anuary 26,	2001	GROUP: 3742		
		· · · · · · · · · · · · · · · · · · ·	U.S.	PATENT	DOCUMENTS					
EXAM. INIT,		DOCUMENT NUMBER	DATE	NAME		CLASS	SUB CLASS	FILING DATE IF APPROPRIATE		
	A98	4,877,757	10/31/89	York et a	1.					
	A99	4,908,492	03/13/90	Okamoto	ct al.					
	A100	4,918,031	04/17/90	Flamm c	al.					
	A101	4,985,113	01/15/91	Fujimoto	ct al.					
	A102	4,996,077	02/26/91	Moslehi	et al.					
	A103	5,061,838	10/29/91	Lanc et a	l.					
	A104	5,130,003	07/14/92	Conrad						
	A105	5,187,454	02/16/93	Collins e	t al.					
	A106	5,303,139	04/12/94	Mark						
	A107	5,440,206	08/08/95	Kurono e	et al.					
	A108	5,460,689	10/24/95	Raaijmal	cors et al.					
	A109	5,505,780	-04/09/96	Dalvie et	al.					
	A110	5,565,247	10/15/96	Suzuki	; ·					
•	A111	5,576,629	11/19/96	Turner e	t al.			_		
	A112	5,630,880	05/20/97	Eastlund						
,	A113	5,654,679	08/05/97	Mavretic	et al.					
	A114	5,712,592	01/27/98	Stimson	et al.					
	A115	5,747,935	05/05/98	Porter et	al.					
	A116	5,756,400	05/26/98	Ye ct al.						
	A117	5,773,919	06/30/98	Seward						
	A118	5,811,022	09/22/98	Savas et	al.					
	A119	5,939,886	08/17/99	Turner e	et al.					
	A120	5,998,933	12/07/99	Shun'ko	· · · · · ·					
EXAM	NER	<u> </u>			DATE CONSIDI	ERED				

SHEET 3 OF 3

FÖRM F	TO - 14	49			ATTORNE	Y DOCK	ET NO.:	ASX-015	CP	
		AL INFORMA	APPLICA	NT(S): Cl	hen et al.					
DISCLO	SURE S	TATEMENT			SERIAL N	O.: 09/77	14,165			
					PILING DA	ATE: Jan	uary 26, 2	.001	GRO	UP: 3742
			U.S.	PATENT	DOCUME	NTS				
EXAM. INIT.		DOCUMENT NUMBER	DATE	NAME			CLASS	SUB CLASS	1 '	
	A121	6,007,879	12/28/99	Scholl						_
	A122	6,164,241	12/26/00	Chen et al						
	A123	6,253,704	07/03/01	Savas	Savas				9/17	/99
			FOREI	GN PATE	NT DOCU	MENTS				
exam. Init,		DOCUMENT NUMBER	DATE	COUNTRY	CLASS	SUB CLASS	FILING DATE	ONLY		ENGLISH LANG (Y/N)
	В6	61-1024	01/07/86	JP .			06/12/84	N		Original and translation provided by Advanced Energy Industries, Inc. during Hilgation with Assignce
			OTHER AL	T, JOUR	NAL ART	CLES, E	ETC.			
EXAM. INIT.	ОТНЕ	R DOCUMENT	S: (Including	Author, Tit	ie, Date, Rei	vant Page	s, Place of	Publicati	on)	
-	C122	Complaint for Declaratory Judgment of Non-Infringement, filed in the United States District Court for the District of Colorado, by Advanced Energy Industries, Inc., dated April 3, 2003.								
	C123	Complaint, filed and Applied Sc	ience and Tech	nology, Inc.	, dated May 1	4, 2003				
	C124	Answer, filed in Industries, Inc.,	dated Decemb	er 10, 2003.						
	C125	Amended Com by Advanced E	plain and Jury nergy Industric	Demand, files, Inc., dates	ed in the United I December I	ed States D 5, 2003.	istrict Cou	rt for the I	District	of Colorado,
EXAMI	viano.				DATEC	ONSIDER	ED			

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DAT 11/8/2004 2:55:46 PM (Eastern Standard Time) * SVR:USPTO-EFXRF-1/1 * DNIS:8729306 * CSID:16175269899 * DURATION (mm-55):03-44_ Testa, Hurwitz & Thibeault, LLP Fleet Bank, N.A. Boston, Massachusetts 02110 January 8, 2004 Date: 125 High Street Boston, MA 02110 ***180.00*** Pay: One hundred eighty and 00/100 Testa, Hurwitz & Thibeault, LLP PAY
TO THE
ORDER OF: Director of U.S. Patent & Trademark Office

Serial No. 09/774,165 Atty Docket No.: ASX-015CP

B SECURITY FEATURES INCLUDED. DETAILS ON BACK. 🗓 I

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ASX-015CP

The "RECEIVED" stamp of the Patent Office imprinted hereon acknowledges the filing of:

Transmittal Form (1 page); Fee Transmittal (1 page); Supplemental Information Disclosure Statement (3 pages); Form PTO-1449 (3 pages); References Labeled A76 to A123, 86 and C122 to C125; Check in the Amount of \$180.00; and a Certificate of First Class Mailing Dated January 9, 2004 (1 page).

Applicants:

Chen et al.

Serial Number:

09/774,165

Atty:

Joseph A. Capraro, Jr./om

Date:

January 9, 2004

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